

Procedure No. DOC 1.2.8B	Effective Date: 03/01/12	Revised:
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PURCHASING STANDARD OPERATIONS PROCEDURE GUIDE

APPLICABILITY

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

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SECTION 1 – INTRODUCTION/OVERVIEW

1.1 Introduction

The Department of Corrections (DOC) utilizes a centralized procurement/contracting function to support all Department facilities/programs/divisions with the acquisition of supplies and services. The Contracts Management Bureau is also tasked with maintaining a centralized database of all Department contracts, and facilitate an effective contract management process intended to minimize risk and liability and maximize efficiency.

1.2 Purpose

This Purchasing manual is intended for use by all employees at all facilities/locations within the Department of Corrections. The purpose of this manual is to provide DOC employees with step-by-step instructions and general assistance when obtaining supplies and/or services. Employees responsible for purchasing supplies and obtaining services are encouraged to refer to this manual and/or contact the DOC Contracts Management Bureau Staff for assistance (reference page i. for a list of contacts).

1.3 Procurement Ethics

As employees involved in the expenditure of public funds, we are called upon to avoid even the appearance of impropriety, and to conduct our business in a manner above reproach in every respect. To assist employees involved in procurement decisions in making good choices concerning ethics, the State Procurement Bureau (SPB) has addressed several frequently asked questions, which are included as Attachment A. For additional, specific information on this topic, please refer to Title 2, chapter 2, MCA.

1.4 Definitions

The words defined herein are commonly used procurement terms. These definitions are intended to describe the meaning of these words in daily use - they are not intended to be legal definitions.

Administrative & Financial Services Division (AFSD): A division within DOC with responsibility for accounts payable/receivable, payroll, budgeting, grants, restitution collection, contracting, and purchasing.

Agency: An administrative unit of state government, including the executive branch, legislative branch, judiciary, and university system.

All-or-None Bid: A bid submitted for a number of different items, services, etc., in which the bidder or department states it will not accept a partial award, but will accept only an award for all of the items, included in the invitation for bid. Such bids are acceptable only if provided for in the invitation for bid or if the bidder quoted an individual price for each of the bid items as listed.

Alternate Procurement Method: A method of procuring supplies or services in a manner not specifically described in law, but instead authorized by GSD under section 18-4-302, MCA, following the requirements of section 18-4-122, MCA.

Award: The presentation of a purchase order and/or contract to a vendor.

Best Interest of the State: The rationale granting a procurement official discretion in taking action most advantageous to the State when it is impossible to delineate adequately a specific response to law or rule.

Bid: A competitive pricing offer made by a bidder in response to an Invitation for Bid (IFB).

Bidder: A party submitting a bid in response to an IFB.

Bid Opening: The formal process through which bids are opened and the contents revealed for the first time to the State, other vendors, and to the public.

Boilerplate: Standard clauses and requirements [incorporated into bid and contract documents] that are derived from statutes and/or administrative procedures of state government.

Competition: The process by which two or more vendors vie to secure the business of a purchaser by submitting the most favorable bid or offer for the requested supplies or services.

Competitive Sealed Bidding: The submission of sealed prices by a party competing for the right or privilege to supply goods or services.

Competitive Sealed Proposal: See Invitation for Bid or Request for Proposal.

Contract Performance Security: A financial guarantee that is available to the State should a contractor fail to faithfully perform a contract or pay workers, subcontractors or material suppliers who have worked on the contract.

Controlled Item: Those supplies and services that must be purchased through a Requisition Time Schedule, Exclusive Term Contract, Print Services, Central Stores, or cooperative purchasing.

Department: Department of Corrections (DOC).

Design Specification: A purchase specification setting forth the essential characteristics that an item must possess to be considered for award, including details as to how the product is to be manufactured.

DOC Contracts Management Bureau Chief: The position within the Administrative & Financial Services Division, assigned the responsibility to supervise Fleet Management, and the contracting and purchasing process within the Department, and manage the Contract Management Bureau staff.

DOC Contract Specialist: The position within the Contracts Management Bureau assigned to the responsibility to assist in the contracting process for the Department; and the overall review and management of the Fleet Management Program.

DOC Purchasing Agent: The position within the Contracts Management Bureau, assigned the responsibility to assist with the cellular telephone program, procard program, and assist with the procurement process within the Department,.

DOC Purchasing Technician: The position within the Contracts Management Bureau assigned the responsibility for all contract routing, contract notifications, contractor documents (i.e. Insurance, Workers Compensation), fuel cards, and fleet management reporting.

Exclusive Term Contract: An award made by the Department of Administration, GSD, on behalf of all state agencies, for a specific product or service that must be purchased [exclusively] from the contract holder(s).

Exigency Purchase: A purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence/condition that requires immediate action.

Free on Board (F.O.B.) Destination - Freight Prepaid: A shipping term defining the point at which time legal title to the supplies is transferred to the buyer. This term indicates that the seller pays the freight charges, owns the supplies in transit, and files all claims for damages as necessary.

General Services Division (GSD): A Division within the Department of Administration, generally responsible for statewide oversight of procurement, surplus property, printing services, office space leasing, and the Central Stores Program.

Invitation for Bid: All documents, whether attached or incorporated by reference, utilized for soliciting formal, sealed bids.

Late Bid/Proposal: A bid or proposal that is received by the agency after the deadline established by the IFB or RFP.

Limited Solicitation: An informal method of purchasing that does not require sealed bids or proposals but does require documented competition.

Non-Exclusive Term Contract: An award made by the Department of Administration, GSD, on behalf of all state agencies, for a specific product or service that may be purchased from the contract holder(s) or may be obtained from another source.

Non-Resident Bidder: A bidder whose residence is not in this state as determined by GSD in accordance with Section 18-1-103, MCA.

Non-Responsive Bid/Offer: A bid or offer that does not conform to the essential requirements of the Invitation for Bid or Request for Proposal.

Offer: A response to an RFP.

Offeror: A seller who is offering a response to a RFP.

Performance Specification: A specification describing the functional and performance characteristics of a product or service.

Procurement: The acquisition of supplies or services (with or without cost) via outright purchase, rent, lease, trade, or other method. It does not include the acquisition of supplies or services by gift.

Proposal: The document submitted by an offeror in response to an RFP.

Protest: A formal complaint brought about by a bidder/offeror, regarding a procurement action or decision of the State, with the intention of achieving a remedial result.

Purchase Order (PO): A document issued by a State agency to formalize a purchase transaction with a vendor. A purchase order confirms the quantity, description, and price of the supplies or services to be provided and applicable terms and conditions that govern the transaction.

Reciprocal Preference: Montana law requires application of a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for non-construction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved.

Request for Information: An informal document requesting information from vendors regarding a product, service, or solution to a problem.

Request for Proposal (RFP): A formal document requesting that vendors submit a proposal to provide a solution to a problem or a need that an agency has identified. An RFP is a procurement process where the State has the ability to evaluate an offeror's response in accordance with established or stated criteria.

Requisition: A form used to request the purchase of supplies or services.

Requisition Time Schedule (RTS): A schedule issued by the State Procurement Bureau and the Central Stores Program each year that designates the dates that requisitions for various controlled items must be submitted during the next calendar year.

Resident Bidder: A bidder who meets the residency requirements of section 18-1-103, MCA.

Responsible Bidder/Offeror: A person who has the capability in all respects to fully perform the contract requirements and the integrity and reliability to assure good faith performance.

Responsive Bidder/Offeror: Means a person who has submitted a bid or offer that conforms in all material respects to the Invitation for Bid or Requests for Proposal.

Restrictive Specification: A specification that unduly limits supplies or services that would be capable of satisfactorily meeting actual needs.

Salvage: Property that is no longer useful in its present condition but has some value in addition to its value as scrap.

Scrap: Property that has no reasonable prospect of being sold except for the value of its basic material content.

Sealed Bid: A bid submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids; or a facsimile submission in response to an Invitation for Bid that will meet the criterion of “sealed” in a legal sense if the transmission is secured by the procurement office.

Small Purchase: A procurement of \$5,000.00 or less made in accordance with ARM 2.5.603.

Sole Source: The only known source with the ability to supply the necessary supplies or services due to the unique nature of the requirement, the vendor, or market conditions.

Specification: A physical or functional description of the desired supplies or services.

State Procurement Bureau (SPB): A unit within GSD, specifically responsible for statewide oversight of procurement.

Supplies: All property, except as otherwise provided by law, including but not limited to: equipment, materials, printing, commodities, and excluding land or any interest in land.

Surplus Property: Property (excluding books) no longer needed by an agency for use in the discharge of its duties and responsibilities.

Tabulation of Bids: A document used to record bid prices and bid related data for the purpose of comparison, analysis, and record keeping.

Term Contract: A contract in which a source or sources of supply are established for a specific period of time at a predetermined price.

Total Contract Value: The entire potential monetary worth of the project from beginning to completion, including the initial contract period and any options to renew.

Trade-In: The process of using an owned item of merchandise as payment or partial payment for the purchase of other merchandise.

Unit Price: The price of a selected unit of good or service (e.g., price per each, foot, or pound, etc.).

Vendor: A party who offers or may offer supplies or services to a public agency.

SECTION 2 – DELEGATED PURCHASING AUTHORITY

2.1 Authorization

The authority to procure or supervise the procurement of all supplies and services needed by the State is conferred upon the Department of Administration by section 18-4-221, MCA. Title 18, MCA, authorizes the Department of Administration to:

- Procure or supervise the procurement of all supplies and services needed by the State;
- Sell, trade, or otherwise dispose of surplus property belonging to the State.

Title 18, chapter 4, MCA establishes statutory parameters for purchasing supplies, equipment, and certain services. Title 18, chapter 5, part 2, and chapter 6, MCA, establish statutory parameters for disposing of surplus property. The Administrative Rules of Montana (ARM) (Title 2, chapter 5) provide procedural requirements for purchasing as outlined by statute.

2.2 Delegation from GSD

While the direction and authority for purchasing remains with GSD, section 18-4-222, MCA allows the Division to delegate much of the day-to-day practice of public purchasing to the Department through the use of a “Procurement Delegation Agreement” A copy of this Delegation Agreement is included for your reference as Attachment B. In general, this delegation agreement authorizes the Department to purchase all non-controlled supplies or services with a "total contract value" of not more than \$25,000.00 and includes exceptions for specific procurement needs of the Department. This agreement is established, in writing, every two years. In accordance with this agreement, the Department is required to:

1. Maintain written procedures for handling all purchases;
2. Follow the procurement procedures provided by GSD (2003 edition of the Montana Operations Manual, Chapter 1-0700); and
3. Use the most current form of GSD boilerplate, IFB forms, RFP template, Limited Solicitation forms, and Sole Source Justification, and all pertinent SPB standard statements and SPB standard forms unless exceptions are approved by GSD. (These standard forms/statements, as well as other procurement resources, are available online from GSD at:
<http://gsd.mt.gov/ProcurementServices/procurementforms.mcpix>
4. Have all Procurement staff attend the "Basic Purchasing Methods and Issues" course offered by GSD through the Professional Development Center.

2.3 Facility/Program/Division Delegation

Through the delegated purchasing agreement with GSD, the Department has delegated each facility/program/division up to \$5,000.00 of purchasing authority, with exceptions as noted herein:

- Montana State Prison (MSP) up to \$25,000.00 - with exceptions (see Delegation Agreement)
- Montana Correctional Enterprises (MCE) up to \$25,000.00 - with exceptions (see Delegation Agreement)
- MSP/MWP Canteen unlimited delegation (in accordance with Title 18, MCA)
- Food Purchases at all facilities unlimited delegation (in accordance with Title 18, MCA)
- Inmate Clothing is exempt from the bidding requirements of Title 18, MCA and can be purchased at all facilities – regardless of cost (see Delegation Agreement)

When a facility/program/division desires to purchase supplies or services that are not “controlled” items and the expenditure is within their delegated purchasing authority, the facility/program/division may proceed to procure the supplies or services according to Title 18, MCA and the procedures outlined in this manual. However, facilities/programs/divisions may request the assistance of the Contracts Management Bureau with any purchase – regardless of their delegated authority.

(*Controlled items are further identified and addressed within Section 4 of this Manual)

SECTION 3 – PURCHASING METHODS AND PROCEDURES

3.1 Procurement Methods

The Department has several methods available for purchasing supplies and services. These methods are based on the "total contract value" of the item or service desired. A description of each method is further detailed herein. Questions should be directed to the DOC Contracts Management Bureau Chief or DOC Purchasing Agent.

3.2 Purchases of \$5,000.00 or Less: Small Purchases

Supplies or services with a "total contract value" of \$5,000.00 or less may be purchased without obtaining competitive quotations or bids. Designated staff may choose a purchasing technique that best meets the needs of their facility/program/division for allowable purchases of \$5,000.00 or less.

3.2.1 Procedure

Verify that the purchase is not a "controlled item" and make arrangements to obtain the good or service. Supplies or services in this category can be obtained directly by telephone, fax, e-mail, written quotations, etc. Documentation is not required. However, staff are encouraged to follow prudent purchasing practices and receive competitive quotations whenever practical.

3.2.2 Award

Staff may issue a Purchase Order to the vendor in order to confirm the prices, terms, and conditions of the purchase, but it's not required. Payment should be made using the State issued Procurement Card. (See Section 8 – Purchasing card or DOC Procard Manual).

3.3 Purchases between \$5,000.00 and \$25,000.00: Limited Solicitations

A Limited Solicitation is designed for one-time purchases that do not exceed a "total contract value" of \$25,000.00. "Non-controlled" items with a "total contract value" between \$5,000.00 and \$25,000.00 may be purchased by procurement staff at those facilities/programs/divisions with the appropriate level of delegated authority using a limited solicitation procedure. This procedure requires a minimum of three written or oral quotations, if available. The limited solicitation procedure must be documented using the DOC "Limited Solicitation" (see "Forms"). This procurement method does not apply to the purchase of "controlled items", such as those offered through Term Contracts and Central Stores, or to purchases exempt from bidding requirements.

3.3.1 Procedure

3.3.1.1 Staff at a facility/program/division without delegated purchasing authority shall prepare a DOC Purchasing Request (see "Forms") describing the requested supplies or services and obtain the appropriate signatures authorizing the expenditure. Forward all documentation to the DOC Purchasing Agent. Include all pertinent information (e.g., manufacturer's literature, product/service brochures) and a list of potential vendors.

The DOC Purchasing Agent will work with the facility/program/division and process the request in accordance with delegated procurement procedures.

3.3.1.2 Staff at a facility/program/division with delegated purchasing authority shall use a Limited Solicitation Form to obtain a minimum of three viable quotes, if available. Quotes can be oral, written, faxed, or e-mailed. Documentation is required, including vendors contacted, quotes received, complete product description and/or service requirements, and all award conditions (e.g., delivery requirements, specific brand, and packaging). The award must be made to the vendor providing the lowest acceptable quote if cost is the only consideration. It is allowable to use criteria other than cost in making an award. However, vendors must be provided with all award criteria and their relative importance.

3.3.2 Award

Award shall be made to the vendor offering the lowest acceptable quotation if cost is the only stated criteria for award. Procurement staff shall issue a Purchase Order to the vendor in order to confirm the prices, terms, and conditions of the purchase.

3.4 Purchases over \$25,000.00

Unless exempt from procurement requirements, supplies or services with a “total contract value” greater than \$25,000.00 must be purchased through use of a competitive procurement process using one of two basic methods: a competitive sealed bid OR a competitive sealed proposal.

3.4.1 Procedure

3.4.1.1 A facility/program/division without appropriate purchasing authority shall prepare a DOC Purchasing Request form, describing the requested supplies or services, and obtain the appropriate signatures authorizing the expenditure. Forward all documentation to the DOC Purchasing Agent. Include all pertinent information (e.g., manufacturer's literature, product/service brochures) and a list of potential vendors. The DOC Purchasing Agent will work with the facility/program/division and process the request in accordance with delegated procurement procedures.

Purchases in this category generally require that the request be submitted to the State Procurement Bureau for processing. If so, a state requisition will be prepared by the DOC Purchasing Agent and forwarded to SPB. SPB will issue an Invitation for Bids or a Request for Proposals based on information presented in the requisition and attached documentation. SPB will solicit bids and proposals, evaluate the bids or monitor the evaluation of proposals, and issue a purchase order to the successful vendor. The DOC requestor will receive copies of the IFB or RFP from the SPB as the documents are generated. These documents must be reviewed immediately so the SPB can be notified if corrections are necessary.

3.4.1.2 A facility/program/division with appropriate purchasing authority shall prepare a Competitive Sealed Bid/Proposal in accordance with the procedures listed herein.

3.5 Writing Specifications

Specifications provide a precise description of the critical features a product or service must have to satisfy a need. A specification should be written from the general to the specific. Good procurement practice and Montana law require that specifications not be unduly restrictive (Ref. Mont. Code Ann. § 18-4-234). Restrictive specifications may limit competition and in the end, do not promote the overall economy for the purposes intended. The following outline should be used as a guideline:

1. Common Title of Product or Service: Begin a specification by listing the common name of the product or service sought: "compact sedan," for example, or "photocopier maintenance." Do not list a specific brand name in the title.
2. Purpose/Use for Product or Service: State the intended purpose for which the item will be used. For example, a lawn tractor specification might state: "suitable for daily use (4-6 hours) on a 7-acre complex with several 20 degree slopes." Vendors must know the intended use to assist in determining the specific product to bid.
3. Description of Product or Service: List all the critical features the product must perform or have to meet your requirements. Use a specification that indicates the necessary performance requirements of the end product or service, or a design specification that details how a product is engineered, if you have a specific physical requirement for the product. However, it is difficult to draft design specifications without being restrictive and limiting competition. A combination of performance and design requirements is often the most ideal specification.

Identify the minimum requirements, but make sure the stated minimums will result in a product that will satisfy the needs. If there are brand name-or-equal products that are of the appropriate quality level, list several of the acceptable brand names and model numbers. Be careful to not imply that only a certain brand name will be acceptable, unless compatibility is an issue.

4. List Special Requirements: Describe any special conditions that the product or vendor must perform. Warranty, service, parts, and training requirements must be included.
5. Unusual Conditions: Describe any unusual conditions, such as compatibility, fiscal year funding source, etc.
6. Delivery Date: Indicate a specific delivery date, if required. If a delivery time is not specified, it will generally be 30 days after issuance of a purchase order.
7. Delivery Location: Be specific about delivery location and any special delivery requirements. Bids must state that supplies are to be shipped F.O.B. Destination – Freight Prepaid, meaning that the title of the supplies remains with the vendor until the supplies are unloaded at the final destination. When supplies are purchased F.O.B. Destination – Freight Prepaid, the vendor is responsible for

damage to the supplies while they are in transit and also responsible for filing freight claims if damages are incurred.

8. Contact Person: List the name, address, and phone number of the person who should be contacted if questions arise.

3.6 Sole Source Procurement

Under limited circumstances, a facility/program/division may need to consider a "sole source" procurement, because this acquisition takes place without the benefit of competition, staff should be extremely cautious when pursuing this procurement method. Sole source procurement is not permissible unless a required item is available only from a single vendor.

Circumstances that might necessitate "sole source" procurement could include:

- Compatibility with current services, equipment, accessories, or replacement parts;
- The vendor is also the manufacturer and only sells the product/service direct; or
- The only acceptable or suitable source for the supply or service.

3.6.1 Procedure

The initial determination to purchase an item as a "sole source" must be made by the facility/program/division for those purchases within their delegated authority.

3.6.1.1 Sole Source purchases of \$5,000.00 or less

Sole source procedures do not apply if the purchase is \$5,000.00 or less. Follow Small Purchase procedures.

3.6.1.2 Sole Source purchases greater than \$5,000.00

Written justification is required for "sole source" purchases greater than \$5,000.00. A DOC Purchasing Request must be completed and submitted to the Purchasing Agent, along with the justification. The Purchasing Agent will work with the requestor and process the purchase in accordance with delegated procurement procedures.

The Purchasing Agent may conduct negotiations with the vendor as to price, delivery, and terms. A purchase order or contract must be issued to communicate prices, terms, and conditions reached through negotiations.

3.6.2 Sole Source Exceptions

The following items do not require sole source justification (Ref. ARM 2.5.604) and may be purchased directly by the program/facility/division in accordance with their delegated authority, Department policy, and this manual:

- Professional licenses;

- Dues to associations;
- Renewal of software license agreements;
- Purchase or renewal of maintenance agreements for software or hardware; or
- Publications available from a single provider.

3.7 Competitive Sealed Bidding

A competitive sealed bid calls for bids, firm prices, and conditions, which may not be changed once they are opened (except for correction of errors as specified by law). This process involves the use of an "Invitation for Bid" (IFB) which must contain detailed specifications of the supplies/services sought, statements alerting bidders to any special requirements, shipping and billing instructions, and "boilerplate" provisions that alert bidders to standard requirements or conditions for doing business with the Department.

The IFB must be sent to an adequate number of bidders to ensure competition. Sealed bids must be received at the location before the time/date specified in the IFB and must be time stamped upon receipt and stored by someone other than the procurement official until publicly opened at the time and place designated in the IFB. Facsimile submissions of bids must be transmitted and completely received [by someone other than the procurement official] prior to the time/date set for receipt of bids. The facsimile bid submission must be similarly time stamped, placed in an envelope, and stored by someone other than the procurement official.

Bid files shall contain sufficient information to facilitate auditing of the procurement process. The facility/program/division must maintain a record of the following documents:

- Approved/Authorized purchase requisition from the requesting party;
- Invitation for Bid, including any addenda;
- Advertised notice to vendors and/or list of vendors;
- All bids received;
- Tabulation of bids;
- Correspondence concerning the purchase, including a recommendation for award from the end user, if appropriate;
- An explanation by the procurement officer if the contract is awarded to anyone other than the low bidder;
- Evidence of a performance bond, insurance, and other certifications, if required; and
- Signed purchase order.

3.7.1 Bid Tabulations

A "bid tabulation sheet" must be prepared once bids have been opened. This tabulation provides a summary document for persons interested in reviewing the bid prices and other pertinent information from each vendor responding to the IFB. The tabulation sheet is also used to determine the acceptable low bid. The bid tabulation sheet should contain the following information:

- Name of vendor;
- Unit price of each item bid;
- Notation if the vendor is "not bidding as specified";

- Notation of who received award; and
- Brand/model of awarded item.

3.7.2 Award Procedures

In an Invitation for Bid situation, the award must be made to the lowest "responsible and responsive" bidder whose bid meets the requirements and criteria set forth in the invitation for bid, including application of the reciprocal preference required by section 18-1-102, MCA. Bids should be awarded after a period of evaluation and not at the bid opening. Bids are considered "awarded" upon issuance of a written Purchase Order from the Department or upon issuance of a contract that is signed by all parties. The Purchase Order should include the unit and extension prices, total price, pertinent specifications, and the terms and conditions.

3.7.3 Reciprocal Preference

Montana law requires the Department to apply a reciprocal preference to the bid of a nonresident bidder equal to the percent of the preference given to the bidder in the state or country in which the bidder is a resident. This type of preference is only applied against bidders whose resident states apply resident preferences. Very few states fit in this category. A reciprocal or "retaliatory" preference is applied only to an invitation for bid for products or an invitation for bid for non-construction services for public works as defined in section 18-2-401(9), MCA, and only in the event that federal funds are not involved in the anticipated purchase. In addition, a reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in section 18-1-103, MCA. According to section 18-1-102, MCA, a public agency shall award:

- A public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.
- A public contract for the purchase of supplies to the lowest responsible bidder without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

3.7.3.1 How to Determine if Reciprocal Preference Applies

- The reciprocal preference, as required in section 18-1-102, MCA, is applied only to an invitation for bid for supplies or an invitation for bid for non-construction services for public works as defined in section 18-2-401(9), MCA, but only in the event that federal funds are not involved in the anticipated purchase.

- The reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in section 18-1-103, MCA.

3.7.3.2 How to Apply the Reciprocal Preference

If it is determined that the lowest responsive and responsible bidder would receive a preference in its resident state, that same preference is added to the bid of the nonresident bidder. If the nonresident bidder is still the lowest responsive and responsible bidder after the preference adjustment has been made, the nonresident bidder is awarded the bid at the price bid, not the adjusted price. For example, if a bid were received from a Wyoming company, we would add 5% to that bidder's price when evaluating the bid because that is the general percentage Montana bidders are penalized when bidding on contracts in Wyoming. A list of states that apply preferences and more detailed explanation of the application of the reciprocal preference are available from the SPB.

A Montana bidder must have a bidder affidavit on file with the Department of Administration to verify resident eligibility before the bidder can benefit from an award based upon the preference. Whether or not a bidder qualifies as a Montana resident is determined by GSD. The determination as to whether or not the vendor qualifies for residency status is based on section 18-1-103, MCA.

Questions concerning the application of the reciprocal preference can be addressed by the State Procurement Bureau staff at (406) 444-2575.

3.8 Competitive Sealed Proposals

Competitive sealed bidding cannot adequately address procurements where specific or generic specifications are difficult or impossible to draft and conventional evaluation cannot be made on absolute criteria. In these instances, a competitive sealed proposal, more commonly known as a "Request for Proposal (RFP)" can be used.

Whereas the evaluation criteria in competitive bidding is limited to a determination as to whether a bid meets the specifications and conditions specified in the Invitation for Bid, the "Request for Proposal" process takes the bid evaluation one step further. Not only is the RFP evaluation criteria used to determine if the proposal meets the intended use, but it is also used to evaluate competing offers and as a basis for further negotiation. The evaluation is limited to the criteria specified in the RFP, but this usually permits more discretion, since it is an evaluation process. RFP's may be practical when one or more of the following conditions exist:

- The contract needs to be other than a fixed-price type;

- Oral or written discussions may be necessary concerning the technical and price aspects of a proposal;
- Offerors may need to be afforded the opportunity to revise their proposals, including prices;
- Award may need to be based upon a comparative evaluation of price, quality, and contractual factors in order to determine the most advantageous offering to the Department. Quality factors include technical and performance capability and the content of the technical proposal; or
- Price will not be the only criteria considered in determining the most advantageous offering.

The evaluation criteria used in the RFP format allows greater flexibility in determining award of a contract. Additionally, it allows the Department and offerors an opportunity to modify their respective request or offer as a greater understanding of the need is gained. As a result, this process is usually a multi-step procedure requiring a significantly greater amount of time and effort than a competitive bid process. An RFP is generally divided into six main parts, as follows:

- Section 1, Project Overview and Instructions, gives a brief overview of the project, names a single point of contact, and includes specific instructions on how to submit a response.
- Section 2, Standard RFP Information, contains information that covers the legal as well as the RFP process issues.
- Section 3, Scope of Project, is the core of the RFP. This is where the “scope” of the project and the specifications are detailed.
- Section 4, Offeror Qualifications, is where the specific qualifications necessary for the project are set out.
- Section 5, Cost Proposal, contains information on how much money is available for the project and/or sets out how the offeror must present its cost proposal.
- Section 6, Evaluation Criteria, states the evaluation criteria and their relative importance. The cost proposal must constitute 20% or more of the total available points. Exceptions to this must be documented in writing and approved by the Purchasing Agent.

RFP files shall contain sufficient information to facilitate auditing of the procurement process. The facility/program/division must maintain a record of the following documents:

- Record of public notice of the RFP request and mailing list;
- Request for proposal;
- All proposals received;
- A determination of award, detailing the basis on which the award was made;
- Notes, recordings or minutes of any discussions with the offerors; and

- The purchase order or contract.

3.8.1 Opening and Awarding Proposals

3.8.1.1 No Public Opening

In contrast to an IFB, proposals received in response to an RFP are not available for public inspection until they have been opened and reviewed by a procurement official for the presence of certain documents. Items protected from public inspection are bona fide trade secrets pursuant to Title 30, chapter 14, part 4, MCA; matters involving individual safety; and company financial information provided to establish vendor responsibility. Once these items have been removed from the public copy of a proposal, the document is made available for public inspection.

3.8.1.2 Late Proposals

Regardless of cause, late proposals must not be accepted and must automatically be disqualified from further consideration. Late proposals should not be opened and may be returned to the offeror (at their expense) or destroyed, as requested by the offeror.

3.8.1.3 Trade Secrets

In order to protect information identified as “trade secrets” from public inspection, the “trade secrets” must be clearly marked and separated from the rest of the proposal by the offeror. An “Affidavit for Trade Secret Confidentiality” must be attached to each proposal containing trade secrets. This affidavit is available from the State Procurement Bureau. The proposal may not contain trade secret matter in the cost or pricing data. (MCA 4-14-30)

3.8.1.4 Scoring of Stated Criteria

The award must be made to the responsible and responsive offeror whose proposal best meets the established or stated evaluation criteria. Other factors may not be used in the evaluation.

After receipt and opening, proposals must be examined for several considerations including responsiveness, qualifications, competitiveness, suitability of the product or service offered, cost and economy for the taxpayer, ability of the vendor to perform, and so on. Specific evaluation factors will depend upon the intended product or service.

3.8.1.5 Public Notice Requirements

Notice of public meetings conducted must be posted to the no less than 72 hours in advance of the meeting to DOC or SPB website. The location must be ADA accessible in conformity with the Americans with Disabilities Act.

3.8.2 Evaluation Resources

The State Procurement Bureau has several resources available to assist evaluation committees in their task of evaluating and scoring the proposals received in response to a Request for Proposal. The following information is available from SPB:

- RFP Evaluation Process – Instructions. This document provides direction to the agency RFP evaluation committee.
- RFP Sample Scoring Guide. This document provides a sample method for scoring the evaluation criteria set out in the RFP.
- Non-Conflict of Interest Statement. Each member of the RFP evaluation committee is required to review the responses and determine if they have a conflict of interest. This form must be signed prior to the evaluation of the RFP and becomes a permanent part of RFP solicitation file.
- Confidentiality Statement. Evaluation members use this form when offers contain confidential information protected under sections 18-4-304 and 18-4-308, MCA. It provides a means to notify the committee members of their responsibility to keep the information confidential and the consequences if they do not.
- Attendance Sheet. This sheet is used when an evaluation committee meets to evaluate the proposals. All members of the evaluation committee should sign it. Other persons attending the meeting may sign the sheet if they wish, but they are not required to sign it.
- Reference Check Questions. Oftentimes an evaluation committee will decide to check references for its top scoring offeror. This form provides some basic questions that may be asked of an offeror's references.

3.9 Selection of Vendors

There is no specific number of vendors who must receive a limited solicitation, bid, or proposal request, but the number must be sufficient to ensure a competitive process. This number may vary according to the supply or service being purchased. However, in order to obtain a reasonable response and invite competition, notice of solicitations should be sent to as many vendors as practical.

IFB's and RFP's can be mailed, faxed, posted electronically, or otherwise furnished to a sufficient number of bidders/offerors to secure competition.

3.10 Public Opening

Montana law requires that bids in response to an invitation for bid must be opened publicly at the time and place designated in the IFB.

Each vendor has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. The name of each vendor, the bid price, and other information, as deemed appropriate by the procurement officer, must be recorded. This record is available for public inspection.

3.11 Late Bids

Regardless of cause, late bids shall not be accepted and must automatically be disqualified from further consideration. Late bids should not be opened and may be returned to the vendor (at their expense) or destroyed, as requested by the vendor.

3.12 Issuing Purchase Orders

A purchase order is a document that formalizes a purchase transaction with another party. It sets out the agreement between the parties as to the terms of the purchase. It contains statements as to the quantity, description, and price of the supplies/services, applicable terms for payments, discounts, dates of performance, transportation terms, and all other factors pertinent to the purchase and its execution by the vendor.

3.13 Mistakes in Bids

The procurement officer may allow a vendor to correct minor mistakes in a bid or offer if the mistake is clearly not attributed to an error in judgment and the mistake and the intended correct bid or offer is clearly evident on the form of the document. Examples of correctable mistakes include, but are not limited to:

- Typographical errors;
- Errors in extending unit prices;
- Transposition errors;
- Arithmetical errors; and
- Signature omitted.

In addition, the procurement officer may permit a bidder or offeror to withdraw a bid or proposal if:

- A mistake is clearly evident on the face of the document but the intended correct information is not similarly evident; or
- The bidder or offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

3.14 Prequalification of Vendors

Prequalification of vendors is an option available to the Department. It is a process allowed by ARM 2.5.507 under the following circumstances:

- A need exists to limit a solicitation to those vendors who meet statutory or licensing requirements applicable to the solicitation; or
- A need exists to minimize the time necessary to verify vendor qualifications which otherwise would jeopardize the timely award of contracts.

When pursuing this option, we must provide documentation that reflects the capability of the selected vendor to adequately perform the contract. The criteria for prequalification may include: compatibility, technical expertise, experience, quality of performance, location, availability, rates, prices, financial stability, past performance, catalogs, or other criteria relevant to a particular procurement. This method must be approved by GSD and does not necessarily represent product or service acceptability or a finding of responsibility.

3.15 Request for Information (RFI)

A “Request for Information” is another option available to the Department. This process is used to obtain preliminary information about a market, product, or service when there is not enough information readily available to write an adequate specification or work statement. An RFI is simply a document used to informally solicit this type of information. It may not be used as a source selection method to procure a product or service (Ref. ARM 2.5.508).

3.16 Used Equipment

At times, it may be in the best interest of the Department to purchase used equipment. However, used equipment must be purchased in accordance with Title 18, MCA, just as new equipment is, unless purchased from the Property and Supply Bureau.

3.17.1 Procedures

Facilities/Programs/Divisions should first check for used equipment at Property and Supply Bureau.

Criteria to consider in making the determination to purchase used equipment include:

1. The type, use, and life expectancy of new versus used;
2. The purchase price of new versus used;
3. The price and general condition of similar equipment among several vendors;
4. The freight charges and FOB point; and
5. The brand/model and availability of service and parts.

3.17 Receipt of Supplies

All facilities/programs/divisions must inspect received supplies. It is not uncommon to receive supplies not meeting specifications (e.g., wood handled shovels in lieu of fiberglass handles, as specified). The guidelines listed below will provide a basis for inspection/receiving.

When supplies are delivered, the receiving agency generally does not have time to inspect all everything while the delivery person is there, nor is it absolutely necessary. There are two steps involved in inspecting supplies: the external inspection and the internal inspection.

3.17.1 External Inspection

When supplies are delivered, the person receiving the supplies should carefully check the external appearance of each package for signs of damage. Any scratches, dents, watermarks, etc., should be noted on the delivery slip. This is the only occasion the agency will have to report external shipping damages. The person receiving the supplies should also note the quantity of items or containers received. The delivery slip should be signed only for the number of items actually received from the carrier. All discrepancies should be noted on the delivery slip, signed, and dated.

3.17.2 Internal Inspection

Once supplies have been received and externally checked, an internal inspection should be performed as soon as possible.

1. Packing Slips. Each container or shipment should contain a shipping document supplied by the manufacturer or vendor. The shipping document should list all the items and quantities shipped. The shipping document should be checked against the items received by type and quantity. Any discrepancies, defects or damages should be noted on the shipping document and the inspector should initial and date the shipping document.
2. Checking receipts against orders. When all items have been checked against the shipping document, the inspector should check it against what was ordered on the purchase order. The inspector should check that the items delivered were actually ordered and meet the specifications as listed on the purchase order. The inspector may need assistance in determining if the supplies meet specifications from a person who is familiar with those supplies.
3. Problems. After inspection, any problems discovered should be referred to the vendor. An agency may wish to contact a vendor by phone, but a written statement of the problem should always be sent to the vendor.

3.18 Purchase Order Renewal/Extension

When the time comes for Purchase Order (PO) renewal, several factors must be considered, such as:

- Are the terms of the extension or renewal included in the current PO?
- Will the total term, including any extension or renewal, exceed the total time allowed by law? (With few exceptions, purchase orders cannot exceed seven (7) years in duration, including renewals (Ref. 18-4-313 MCA).
- Are funds available for continuation of the PO?
- Does the current PO serve the best interests of the Department?

In addition, the required insurance and/or contract security (if applicable) must remain in effect for the entire renewal period. PO renewals shall be processed in accordance with the delegated purchasing authority and procedures listed within Section 3 of this manual.

3.19 Vendor Protests

On occasion, facilities/programs/divisions may be required to respond to a vendor protest concerning the solicitation, award, or administration of a contract within their authority. How the dispute is handled depends on the dollar amount involved and the status of the procurement.

Pursuant to section 18-4-242, MCA, small purchases and limited solicitations, as defined in ARM 2.5.603, are not subject to protest. If the protest involves a solicitation or award of a contract over the amounts established in ARM 2.5.603 for small purchase or limited solicitation, the agency must follow the protest procedure established in section 18-4-242, MCA. Attorneys are generally involved at this level and the protest may be taken through the contested case hearing process of the Montana Administrative Procedure Act and ultimately through judicial review.

In the event the protest concerns the administration of an existing contract, the protesting party must follow the protest procedure set out in the contract. If there is no procedure stated in the contract, the protesting party must submit a protest in writing no later than 14 days after the cause of the action, question, or dispute has arisen.

If the protest of a bid or proposal is not resolved by mutual agreement, the agency must issue a written decision on the protest within 30 days after the receipt of the protest. In issuing the final decision, the decision must: (a) state the reason for the action taken by the agency with regard to the contract; and (b) inform the aggrieved party of the party's right to pursue judicial action under Title 18, chapter 1, part 4, MCA.

According to section 18-4-242, MCA, the Department is under no obligation to delay, halt, or modify an award or contract pending the result of a protest, contested case proceeding, or judicial review.

All protests received by a facility/program/division must be reported to the DOC Purchasing Agent who will in turn notify the State Procurement Bureau, as stipulated in our delegation agreement.

3.20 Records Management – Retention Schedules

Section 18-4-126, MCA, requires that all procurement records be retained, managed, and disposed of in accordance with the state records management program, found in Title 2, chapter 6, MCA. Each facility/program/division must retain the written procurement documentation for the procurements it conducts and administers. The SPB retains the procurement records for the procurements it conducts and administers. The SPB, in conjunction with the Secretary of State, Records Management Bureau, has established the following retention schedule for its procurement records:

Solicitation Files: RFP's, IFB's	4 years after completion of the procurement process.
Purchase Order Purchase Order Adjustment	4 years after PO/POA termination.
Contract	4 years after contract termination.
Sole Source Files	4 years after PO/contract termination.
Vendor Contract	4 years after termination.
Insurance/Workers' Compensation Certificates	Until PO/contract termination.
Contract Security – other than surety bond	Until PO/contract termination.
Surety Bond	8 years after PO/contract termination.

SECTION 4 - CONTROLLED PURCHASES

4.1 Overview

The General Services Division (GSD) retains control of specific purchases (controlled items) and the Department is required to purchase these items through GSD. Controlled items may be obtained through GSD in these ways: (1) Requisition Time Schedule; (2) Exclusive or Non-Exclusive Term Contracts; (3) Central Stores; (4) Printing; (5) Vehicles; or (6) Cooperative Purchasing.

In addition to the items listed above, the Department has also identified other purchases that require specific approval and/or assistance by designated individuals or programs. These include Cellular Telephone service, Computer Hardware and Software, Telecommunications systems, and Photocopiers. Procurement and approval of these items are further addressed within this section.

4.2 Prior Approvals

By statute, the Department is required to obtain approval on certain supplies/services before they can be purchased. Approvals are required whether these supplies/services are purchased through GSD or at the agency level. For purchases made through GSD, these approvals must be obtained before the requisition is sent to the State Procurement Bureau. For purchases made at the agency level, these approvals must be obtained before a purchase is made or a solicitation is sent to vendors.

4.2.1 Printing Equipment

All printing-related equipment (duplicating, printing, bindery, and graphic arts) to be used within a 10-mile radius of the capitol area must be approved by Print and Mail Services, GSD, Department of Administration (Ref. Mont. Code Ann. § 2-17-301.).

4.2.2 Information Technology Hardware/Software

Information technology resources, including hardware, software, voice (excluding headsets and related accessories), video, electronic data, and associated services and infrastructure used to store or transmit information in any form requires approval from the Department of Administration, Information Technology Services Division (Ref. Mont. Code Ann. § 2-17-512.) and the DOC Information and Business Technology Bureau (Ref. DOC Policy 1.7.2).

Questions concerning a hardware or software purchase should be directed to the IT Service Desk at 444-4234.

4.2.3 Records Management Equipment/Systems

Records management equipment/systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods require approval by the Information Technology Services Division, Department of Administration (Ref. Mont. Code Ann. § 2-6-214).

4.2.4 Mailing Equipment

All mailing equipment to be used within a 10-mile radius of the capitol area must be approved by Print and Mail Services, GSD, Department of Administration (Ref. Mont. Code Ann. § 2-17-301).

4.2.5 Filing System Equipment and Microfilm Equipment

Filing system equipment and microfilm equipment purchases require approval by the Secretary of State, Records Management Bureau (Ref. Mont. Code Ann. § 2-6-203).

4.2.6 Equipment/Property Trade-in

All equipment/property trade-ins (except photocopiers per 1-0750.40 MOM) require approval by the Property and Supply Bureau, GSD, Department of Administration (Ref. Mont. Code Ann. § 18-6-101, ARM 2.5.701 and 2.5.702.)

4.3 Requisition Time Schedule (RTS)

The Requisition Time Schedule is a calendar of dates when certain items are coordinated for purchase by the State Procurement Bureau. These RTS items include: passenger cars, patrol vehicles, and light duty trucks; and the renewal of current janitorial contracts.

4.3.1 Procedures

To request the purchase of an RTS item, submit a DOC Purchasing Request to the DOC Purchasing Agent five working days prior to the date indicated on the RTS. The request will then be reviewed and delivered to State Procurement Bureau on a State requisition.

4.4 Exclusive or Non-exclusive Term Contracts

Term contracts are established by the State Procurement Bureau to allow State agencies to efficiently purchase supplies and services at a predetermined price for a specific period of time. Term contracts are issued as "exclusive" or "non-exclusive."

If a term contract is issued as "exclusive," the Department is required to purchase the contract item from the listed term contract holder(s). With an exclusive term contract, the contract holder has the exclusive right to sell the item or service to all State agencies at the established contract price for the term of the contract. Failure to purchase the item from an exclusive contract holder may subject the Department to contract default and, subsequently, the contract holder may seek reimbursement of lost revenue for not purchasing the product from them as required by contract.

If the term contract is "non-exclusive," then the Department is not required to purchase the item from the contract holder, but often times the prices are very reasonable and the terms and conditions are favorable because the purchase already went through a competitive bidding process.

Examples of Term Contract items commonly used by this Department include:

Photocopiers
Printed Envelopes
Color Photocopying
Temporary Service Agencies
Electronic Monitoring

Copies of Term Contracts are available from the DOC Purchasing Agent.

4.4.1 Procedures

With the exception of photocopiers, each facility/program/division can purchase Term Contract items on an "as needed" basis. To order a term contract item, follow the procedures listed within the applicable Term Contract. This may require the issuance of a Purchase Order or other written communication with the contract holder. Generally, the Term Contract items should be purchased using the State issued Procurement Card (Visa). The Term Contract number should be referenced on all correspondence related to the purchase.

4.5 Photocopiers

All requests to purchase/lease a photocopier shall be submitted to the DOC Purchasing Agent for processing.

4.6 Central Stores Products

The Property and Supply Bureau of GSD operates a Central Stores program on behalf of the State. The Central Stores program develops standard specifications and then procures, warehouses, and delivers certain common use items (office supplies, fine paper, coarse paper, computer paper, janitorial supplies) to state agencies. Like term contracts, the Central Stores program allows state agencies to take advantage of volume pricing while avoiding the need to stockpile items.

State Agencies are required by law (18-4-302, MCA) to purchase office supplies from Central Stores. However, there is an exception to this Statute, providing that: "an agency may purchase an "office supply" directly from a vendor whose publicly advertised price, established catalog price, or discount price offered to the purchasing agency is less than the price offered by the Central Stores program, and the office supply conforms in all material respects to the terms, conditions, and quality offered by the Central Stores program." In other words, if you can find a better price on a statutorily defined "office supply" at a local store, you can buy it there. However, the pricing, selection, and convenience offered by the Central Stores Program is very reasonable and allows you to fulfill your office supply needs without ever leaving the office.

4.6.1 Procedures

Each facility/program/division shall order office supplies directly from Central Stores. Ordering instructions/procedures are detailed in the Central Stores Catalog maintained by the DOC Purchasing Agent. Central Stores will provide each facility/program/division with a copy of their catalogue and ordering instructions/forms, upon request.

4.7 Leased Office Space

The Department of Administration is responsible for approving all office space lease agreements. GSD must be contacted as soon as possible upon determination that a need for space exists.

4.7.1 Procedures

Regardless of cost, each facility/program/division must first contact the DOC Contracts Management Bureau Chief whenever a need for leased office space is anticipated. The DOC Contracts Management Bureau Chief will assist with preparation of a lease agreement and will coordinate the process through the Leasing Officer designated by the Department of Administration, as necessary. Lease agreements will generally be negotiated by the Lease Officer, with assistance from the requesting party.

4.8 Cellular Services

Cellular services (cell phones, aircards, and data devices) are managed and maintained by the Contracts Management Bureau, with the exception of Montana Correctional Enterprises. The Contracts Management Bureau maintains a record of cellular assignments, calling plans, usage history, etc. All cellular plan/telephone changes (except MCE) must be coordinated through the designated Purchasing Agent.

4.8.1 Procedures

Complete a Cellular Telephone Request & Authorization (see “Forms”) and submit to the Purchasing Agent for processing. Requests must be approved by the Director, Division Administrator, or Warden, as appropriate. (Ref. DOC Policy 1.3.51, attached)

4.9 Personal Service Contracts

Contracting for personal services is specifically addressed in DOC Policy 1.2.9 (Attached) and requires coordination with the DOC Contracts Management Bureau Chief if the “total contract value” is greater than \$5,000.00. Refer to Section 6 of this manual for further detail.

4.10 Printing

All printing shall be obtained through MCE or GSD, Print Services Bureau in accordance with DOC Policy 5.2.3 (attached) and 18-7-101, MCA.

4.10.1 Procedures

4.10.1.1 MCE

Contact the MCE Print Shop for details on how to submit your request for printing services and obtain a quote.

4.10.1.2 Print Services

Submit a print Services Request form (see “Forms”) directly to Print Services for processing. Print Services will produce the required printing at one of their print facilities or contract with a private printer. The

requestor will have the opportunity to review any bid documents and the subsequent Purchase Order. Actual samples of the requested document are extremely valuable in the specification writing process and should be included whenever possible. For more detailed information regarding this subject, contact the Print Services Bureau and request a copy of their “Getting it Printed” manual.

4.11 Montana Correctional Enterprises (MCE)

DOC Policy 5.2.3 (Attached) requires that products manufactured by MCE must be purchased from MCE unless it is determined, in writing, that purchase from MCE is not feasible due to one of the following reasons: 1) The MCE product can’t be delivered by MCE within a reasonable time frame; 2) The MCE product doesn’t meet agency needs; or 3) The price offered from MCE is not competitive with that of a comparable product available from another source.

4.11.1 Procedures

Prior to purchasing MCE manufactured items from another vendor, an Outside Vendor Authorization Form (see “Forms”) must be completed by the appropriate procurement staff and then submitted to the MCE Administrator.

SECTION 5 – PURCHASING EXCEPTIONS

5.1 Background

Exceptions are supplies and services purchased outside standard procedures due to unique requirements or unusual circumstances. By definition, they are few in number and may require additional justification and documentation.

5.2 Salaries/Fees/Professions/Training/Other

As established in ARM 2.5.301, delegation authority and competitive procedures are not necessary for the following purchases: salaries, those services exempted by section 18-4-132, MCA; travel and per diem; retirement and social security payments; freight; landfill charges; supplies or services whose prices are regulated by the public service commission or other governmental authority; pastoral services; training; training and conference space rental and catering; and fresh fruits and vegetables.

5.3 Sheltered Workshops

Delegated authority and competitive procedures are not required for purchases from Sheltered Workshops. Sheltered workshops are located throughout Montana. These workshops are non-profit businesses incorporated under the laws of the State for the purpose of providing vocational services to disadvantaged individuals. Numerous supplies and services are available to state agencies from these workshops. Available services include bulk mailing, janitorial, and manufacturing includes products like pallets and duffle bags. A list of Sheltered Workshops located in Montana, including the products and services provided by each, can be obtained by contacting the State Procurement Bureau or <http://gsd.mt.gov/content/Docs/MontanaShelteredWorkshops>

5.4 Interagency Agreements

Delegated authority and competitive procedures are not required for purchases through interagency agreements, unless otherwise prohibited by law.

5.5 Exigencies

Under very limited circumstances, staff may need to make an "exigency" purchase. Exigency purchases are typically made outside of the normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition that requires immediate action. It does not include a situation created by poor planning.

Need is fundamental to justifying an exigency procurement. An exigency must not be used to satisfy personal preferences or convenience; for preventing funds from reverting at the end of the fiscal year; or, for any reason that seeks to circumvent regular procurement methods.

The following procedures must be considered when considering an exigency purchase:

- Exigency procurement in excess of \$5,000.00 is limited to those supplies and services necessary to meet the exigency.

- Staff of the procuring facility/program/division shall make an exigency determination. The determination must be in writing and must state the basis for exigency procurement and for the selection of the particular vendor. An exigency may exist if:
 1. Human life is in danger;
 2. A natural disaster or act of God requires immediate action;
 3. An unanticipated circumstance poses a threat to DOC property;
 4. A situation exists where work on a specific project will stop or be adversely affected unless immediate action is taken; or

5.5.1 Procedure

The purchase procedure used shall be selected to assure that the required supplies or services are procured in time to meet the exigency. However, such competition as is practicable shall be obtained. A record of each exigency procurement must be submitted to the DOC Contracts Management Bureau Staff within two (2) weeks of the exigency and shall include:

1. The vendor's name;
2. The amount and type of the contract;
3. A list of supplies and services purchased under the contract; and
4. Written documentation justifying the exigency procurement and the basis for the selection of a particular vendor.

5.6 Inmate Clothing

Regardless of cost, each facility/program/division is authorized to purchase suitable clothing for inmates housed in a DOC facility or community-based program. These purchases are exempt from competitive bidding requirements, as noted in the Procurement Delegation Agreement.

SECTION 6 - CONTRACTS

6.1 Introduction

This section of the manual is intended to guide you through the appropriate contracting procedures, help you generally understand the Department of Corrections Contracting/Purchasing process, and allow you to perform those related functions of your job more effectively.

Contracting and Purchasing are basically one in the same. The terminology may be transparent. We generally consider “Contracting” as a method of obtaining services and “Purchasing” as a method of obtaining goods. Likewise, “Contracting” can mistakenly be confused as a method used to obtain goods/services without a competitive bid process and “Purchasing” as a method commonly linked to a competitive process. Despite the terminology or methods used to get you there, the goal of each one is basically the same - to obtain an agreement between two or more parties that details the duties, responsibilities, and compensation terms for all parties involved.

The only method of contracting with the Department is by written agreement. Accordingly, the Department has developed a standard Contract shell that is designed to promote efficiency and reduce risk exposure to the Department. This shell is used primarily to obtain services. However, it may also be utilized to procure goods and/or services. Normally, a Purchase Order is sufficient to obtain goods or goods and services. Purchase Orders are simply another form of contract.

Regardless of the method used, the Department must obtain all goods and services in accordance with our Procurement Delegation Agreement (see attached) and applicable statutes, which are generally found under Title 18, MCA. The Department has the authority to enter directly into Contracts with certain service providers, such as those exempted under 18-4-132, MCA. This can be done regardless of the costs involved. Many of the Departments’ contracted service providers, but certainly not all, fall into one of these categories. Those that don’t, generally require some form of competitive procurement in order to obtain the requested service. The appropriate methods are provided within this manual. Questions should be directed to the DOC Contracts Management Bureau Chief.

6.2 Frequently Asked Contract Questions

1. Can I enter into a service Contract without review and approval of an attorney and/or the Contracts Management Bureau?

Yes. Contracts under \$5,000 can be handled by the requesting facility/program/division using the Department approved Contract shell. A copy of the fully signed Contract must be forwarded to the Contracts Management Bureau for filing. All other Contract requests must be submitted to the Contracts Management Bureau Chief or the DOC Contract Specialist for processing in accordance with DOC Policy 1.2.9.

2. Who's responsible for writing a Contract?

The requesting party is initially responsible for “drafting” the Contract or at least providing the Contracts Management Bureau Chief or the DOC Contract Specialist with the appropriate contract details. Using the Department's standard Contract shell, the requestor shall complete the applicable fields (generally Sections 1 - 6) and submit the proposed Contract to the Contract Management Bureau for processing. The Contracts Management Bureau Chief or the DOC Contract Specialist will provide assistance at any time during the process.

3. Is the “standard Contract” shell available electronically?

Yes. It's located on the intranet at http://cor.mine.mt.gov/Divisions/Admin_Financial/Contracts/forms.mcp and is titled "Contract Shell." If you don't have access to this site, contact the Contracts Management Bureau, and an electronic version will be provided.

4. Who approves contract payments?

Generally speaking, approval of contractor payments is made by the contract liaison assigned to the contract or someone at the appropriate facility/program/division. It is the duty of the contract liaison to be responsible for insuring that services were provided, and invoicing submitted, in accordance with the contract terms and conditions. Once approved, invoices should be sent to the AFSD - Attn: Accounts Payable.

5. Can services be provided by the contracting party prior to signing a Contract?

Yes, but only in an emergent situation. A determination by appropriate personnel that failure to allow the contractor to immediately provide the necessary services will result in harm, liability, or a breach of security to the Department. However, allowing a contractor to provide services without a written agreement places the Department into a position of increased liability. In the absence of a signed Contract that specifies the terms and conditions of employment and compensation, the rights and obligations of each party is questionable. This could lead the Department into a litigation process, whereby both parties rely upon recollection and interpretation of earlier verbal discussions. Unless an emergent situation is present, all contracts shall be processed in advance of the contracted start of service.

6. Are the standard Contract terms and conditions negotiable?

Yes and no. Refer to section 6.5 of this chapter. The standard Contract shell has been reviewed and approved by the Legal Services Bureau and meets the contractual requirements of the Department and the State. Contracts that incorporate changes to the standard language may take longer to process, due to the additional time necessary for review of the proposed changes. Generally speaking, the Department has had very few problems related to contractor acceptance of our contract language. However, this can be addressed on a case-by-case basis.

6.3 Liaison Duties

Contract Liaisons serve as the primary contact person for all communications between the department and the contractor. Typically, the Contract Liaison will also provide the principal contract management and monitoring function. The primary functions of the Contract Liaison include:

- serve as primary contact for the contractor;
- oversee day-to-day operations and provision of services by the contractor;
- determine necessary contract changes and notify the Bureau of requested changes;
- negotiate contract terms, scope of service, and compensation;
- review invoiced services [per contract] and approve for payment, as appropriate;
- contract monitoring to ensure contractor compliance with contract terms;
- evaluation of contractor performance [annually] or more often, as necessary;
- submission of Contract Justification for new contracts or renewal of existing contracts;
- submission of quarterly contract reports; and
- submission of annual contractor performance evaluation reports.

6.4 Contract Justification and Contractor Performance Evolution

A copy of the Contract Justification form (attached), Contractor Performance Evaluation (for renewing contracts), and “draft” contract, or amendment, and must be submitted to the Contracts Management Bureau to initiate the Contract routing process. The requestor must complete all information requested on the Contract Justification form. Processing may be delayed if information is incomplete. Electronic versions of the contract justification form, contractor performance evaluation, and “draft” should be emailed to corcontracts@mt.gov .

6.5 Instructions for Using the Contract Shells

Using the Departments’ Contract shell, each facility/program/division is responsible for drafting the initial contract language and submitting to the Contracts Manager for processing. (Ref. DOC Policy 1.2.9)

The Contract Shells can be accessed via the intranet at [http://cor.mine.mt.gov/Divisions/Admin_Financial/ Contracts/forms.mcp](http://cor.mine.mt.gov/Divisions/Admin_Financial/Contracts/forms.mcp). For those not able to download these documents, the Contracts Manager can provide them via email, upon request.

With assistance from the Legal Services Bureau, the Department has standardized a contract shell for “services” and “amendments.” Each shell is intended to bring consistency and efficiency to the contracting process, as well as to save considerable drafting time. The standard shells contain minor direction/instruction and are “fill-in-the-blank” type documents. Standard contract terms and conditions are used; some of which are not to be altered. More detailed instructions are contained herein.

The following instructions provide guidance regarding each shell. The “Contract Shell” should be used for nearly ALL service and training contracts - regardless of dollar amount.

6.6 Standard Contract Shell

The requesting facility/program/division is responsible for drafting each Contract and Contract Amendment. The Contracts Management Bureau will provide assistance, as necessary.

1. PARTIES

The opening paragraph specifies the parties to the contract. Contracts are in the name of the Department followed by the name of the facility/division. The address and phone number for the Department shall not be altered. The Contractors Name, Address, and Telephone number.

2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

Be specific as to the required duties and/or expectations of the contractor, including appropriate interaction with staff. The scope of work must demonstrate that the contractor is free from control by the Department; independent of direct supervision; in an independently established trade/occupation; and, providing their own equipment/tools necessary to accomplish the duties. Failure of any portion of these requirements may infer that the Contractor is an employee and not an independent contractor. The result could mean benefits, wages, and/or employee liabilities are the responsibility of the Department. The scope of work should include required performance goals/timelines, type and date of inspections or reports, patient/Department contacts, location of work-site, etc. These duties should be listed alphabetically by character, starting with "A." If additional specifications are required, they should be listed as a sub-group, starting with "1." It may be easiest to list each required duty as a separate statement.

Since this section establishes the duties and performance expectations of the contractor, it should appropriately and accurately answer the questions of who does "what", "when", and "where." This section is used to determine contract compliance of all parties to the Contract.

3. COMPENSATION/BILLING

Subsection "A" must be completed, as appropriate. The remaining subsections should be left as written. Additional compensation to be covered by the Department, such as motel expenses, per diem, travel expenses, etc., not specifically included in Subsection "A" must be listed accordingly.

4. AGENCY ASSISTANCE

Can be modified, as necessary.

5. TIME OF PERFORMANCE

Insert dates of performance and renewal periods, as appropriate. The initial term of the contract is normally 1 or 2 years. With few exceptions, contracts can't exceed seven (7) years in duration, including renewals (Ref. 18-4-313 MCA). The contractor cannot start work prior to signing the contract and the effective date must not occur before receipt of all contract signatures!

6. LIAISON AND NOTICE

The liaison must include the mailing address and phone number for each.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

Preferably left as standard language. May be modified as necessary.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Standard language. Do not modify without prior approval from Legal.

Prior approval is required from the Department of Administration in order for an independent contractor to be covered by the Tort Claims Act. Please contact the DOC Contract Manager if considering this action. Providing written documentation to the Contract Manager must substantiate the following criteria.

- A. The service proposed under contract must fulfill or further state purposes and be funded and/or supported by the participant.
- B. The proposed service to be provided under contract is unique and difficult to obtain in the absence of state indemnification.
- C. The independent contractor is unable to obtain insurance (for reasons other than poor loss record and/or insurance is cost prohibitive and generally not available for the type of risk exposure proposed under contract).

If State indemnification is approved, Section 8 will read: "It is the intent of the parties that the Contractor shall be provided the immunization, defense, and indemnification provided all public officers and employees for civil liability pursuant to Title 2, Chapter 9, Parts 103, MCA."

9. HOLD HARMLESS AND INDEMNIFICATION

Standard language. Do not modify without prior approval from Legal.

10. INSURANCE

There are three general types of insurance coverage that may be required - General Liability, Automobile Liability, and Professional Liability. General Liability is required on all contracts. Depending on the duties/responsibilities of the Contractor, there may also be a need for Automobile and Professional Liability.

General Liability - When contracting for services that have heightened or limited risk, the coverage limits can be adjusted to appropriate levels. Generally speaking, the annual aggregate single limit per occurrence is twice the amount of the combined single limit per occurrence. Low-risk limits are usually \$300,000/\$600,000; medium-risk is \$500,000/\$1,000,000; and high risk is not less than \$1,000,000/\$2,000,000. However, the ceiling on high-risk contracts is dependent upon the service and the contractor. In some cases, it may be as high as \$50,000,000.

Automobile Liability – Generally required when the contractor is using a vehicle in performance of the contracted services. In most cases, a limit of \$300,000/\$600,000 is appropriate.

Professional Liability - This will be required whenever a Contractor provides a service that is considered "professional" by trade. These are services that require the Contractor

to obtain a professional license from the State of Montana prior to providing services. These professions include, but are not limited to, physicians, dentists, psychologists, psychiatrists, engineers, architects, attorneys, and other licensed professionals.

SECTIONS 11 through Contract Signature.

Standard language. Do not modify.

6.7 Standard Contract Amendment

Submit the requested contract changes to the Contracts Management Bureau via email along with a Contract Justification form, and Annual Evaluation of Contractor Performance (if required). The Contracts Management Bureau will then prepare a “draft” and return for review/comment prior to routing for signatures. The amendment method used by the Department allows all parties and approving staff to readily track the proposed changes. The amendment will display the current contract language, verbatim, and then show the new language using an underline and the language to be removed using a strikethrough.

(Example)

Section 5 is amended to read (new language underlined, old language interlined):

5. TIME OF PERFORMANCE

This Contract shall take effect on January 1, 2008 and shall terminate on December 31, ~~2010~~ 2011, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~five (5)~~ four (4) additional years.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

For additional clarification or assistance concerning the contract shells or these instructions, please contact the Contracts Management Bureau Chief at 444-4941 or, the Contracts Specialist at 444-0436.

SECTION 7 - SPECIAL CIRCUMSTANCES

7.1 Overview

Some solicitations, particularly those that involve "construction-like" services, may require that language be inserted into the solicitation and resulting purchase order/contract that addresses the payment of prevailing wages, contractor registration requirements, and/or contractor withholding requirements. This information is provided as an informational resource only and not as a detailed list of procedures. All facilities/programs/divisions are encouraged to coordinate these types of contracts with the DOC Contracts Management Bureau Chief or the DOC Contract Specialist and/or Legal Unit prior to obtaining services of this nature. For additional information on Prevailing Wages, refer to attachment C.

7.2 Notice of Prevailing Wages

One issue that needs to be addressed in issuing IFBs and RFPs is the statute requiring the payment of prevailing wages for "public works contracts" (Mont. Code Ann. § 18-2-403). Under current law, all "public works contracts" over \$25,000 for "construction" and "non-construction" services must require the payment of prevailing wages. The provision requiring the payment of the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, must be included in the bid document and the resulting contract (Ref. Mont. Code Ann. § 18-2-422.) The terms "construction" and "non-construction" are defined in section 18-2-401, MCA.

"Non-construction services" means work performed by an individual, not including management, office, or clerical work, for:

1. The maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;
2. Custodial or security services for publicly owned buildings and facilities;
3. Grounds maintenance for publicly owned property;
4. The operation of public drinking water supply, waste collection, and waste disposal systems;
5. Law enforcement, including janitors and prison guards;
6. Fire protection;
7. Public or school transportation driving;
8. Nursing, nurse's aide services, and medical laboratory technician services;
9. Material and mail handling;
10. Food service and cooking;
11. Motor vehicle and construction equipment repair and servicing; and
12. Appliance and office machine repair and servicing.

For assistance concerning prevailing wage language, contact the State Procurement Bureau at 444-2575 or the Department of Labor and Industry, Labor Standards Bureau at 444-1376.

7.3 Contractor Registration Requirements

Construction contracts in excess of \$2,500.00 require contractors to be registered with the Montana Department of Labor and Industry pursuant to section 39-9-201, MCA. Each

facility/program/division must confirm this registration prior to contract award. Any questions regarding contractor registration should be directed to the Employment Relations Division in the Department of Labor and Industry 444-7734.

7.4 Contractor Withholding Requirements

A facility/program/division using the services of a public contractor is also required to withhold 1% of all payments for any "public construction work" over \$5,000 (Mont. Code Ann. § 15-50-206).

7.4.1 Procedures

The facility/program/division issuing the contract is responsible for notifying the Department of Revenue (DOR) that the 1% withholding requirement will apply to the project and also completes the "Contract Award Report."

SECTION 8 – PURCHASING CARD PROGRAM

8.1 Background

The Purchasing Card Program is a method of managing low-dollar purchases that offers numerous and significant benefits to the Department. The purchasing card is simply a credit card (Visa) issued to Department employees. In general, the Purchasing card can be used to purchase supplies from any vendor that accepts Visa, depending upon the spending limit of the cardholder. The Purchasing Card must not be used for personal purchases.

The advantage of using a credit card is that the vendor receives their money within 48 hours and the Department doesn't have to handle multiple invoices multiple times, which results in the issuance of multiple warrants and subsequent mailing costs of warrants to the vendors. Instead, the Department only makes one inter-agency journal payment to the Department of Administration for the entire amount charged by all Department cardholders each month. A list of program requirements and details is provided in the Purchasing Card Manual, included herein (Attachment D).

8.2 Transaction Procedures

To purchase supplies or services with the Purchasing Card, inform the merchant that you will be paying by credit card, and then proceed with the transaction as follows:

- If you are making the purchase in person, present the Purchasing Card to the merchant and proceed as directed. If it is a telephone transaction, provide the merchant with your Purchasing Card account number and the expiration date.
- Retain all receipts, invoices, and Purchasing Card slips.
- Follow the procedures for approval and payment of your charges.

Internet purchases should be made on secure websites whenever possible. Pay close attention to your web browser security settings and security warnings. With telephone and mail order transactions, inform the merchant to:

- Avoid writing the credit card number on the shipping slip.
- Note on the packing slip that the merchandise was paid for by credit card.
- Include the credit card slip inside the package.

8.3 Transaction Log

Purchasing card holders must record each Procurement card transaction on the Purchasing Card Transaction Log (Attachment E) and submit the log to the Administrative and Financial Services Division, along with the respective receipts/invoices. All log sheets shall be submitted monthly, by the date designated by the Purchasing Card Program Coordinator.

SECTION 9 - PROPERTY MANAGEMENT

Contact the Accounting Bureau, Administrative Financial Services Division.

SECTION 10 - REFERENCED ATTACHMENTS

- A. Ethics – Questions and Answers
- B. Delegation Agreement
- C. Questions and Answers regarding Prevailing Wage requirements
- D. DOC Purchasing Card Manual
- E. Purchasing Card Transaction Log

SECTION 11 - REFERENCED FORMS

- A. DOC Limited Solicitation
- B. DOC Purchasing Request
- C. DOC Purchase Order
- D. Cellular Telephone Request & Authorization
- E. Outside Vendor Authorization
- F. Hand Property Receipt
- G. Contract Justification Form

SECTION 12 - REFERENCED POLICIES

- A. DOC Policy 1.7.2, IT Hardware, Software and Contracted Service Standards
- B. DOC Policy 1.3.51, Cellular Telephone Usage
- C. DOC Policy 1.2.9, Contracts
- D. DOC Policy 5.2.3, Department MCE Product Sales
- E. DOC Policy 1.2.8, Procurement